

## The Role of the Notary in Preventing and Overcoming Mistakes in *Van Omstandigheden* Made by Housing Developers in Home Purchase and Sale Credit Agreements through the Developer

**Akhmad Bagus Faizal**

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,  
E-mail: [bagusfaizal93@gmail.com](mailto:bagusfaizal93@gmail.com)

**Abstract.** *The implementation of housing credit agreements through housing developers often experiences problems, one of which is fraudulent acts committed by the developer, resulting in losses for both housing buyers and the bank as the loan fund provider. The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in the interactions between them. That the real reality of life does not exist in the empirical world which is also the world of observation, does not appear in the form of patterned and structured behavior objectively (let alone normative) and therefore can be measured to produce quantitative data. The reality of life actually only exists in the realm of meaning which appears in the form of symbols that can only be understood after being interpreted. Such a reality cannot be easily "captured" through observation and measurement from outside. Based on the research conducted, it was found that notaries also in its development often become mediators in disputes related to notarial disputes including issues of agreements on the use of building construction services, this is a development of the Notary's authority as a Notary legal advisor. In its development, this does not yet have legal certainty considering that the UUJN does not explicitly state that mediators are one of the Notary's authorities, however, the UUJN also does not contain a prohibition on Notaries becoming mediators, and it is known together that mediators are also not positions included in the State Civil Apparatus. The absence of clear regulations related to the position of Notaries as mediators, makes the position of Notaries as mediators in notarial disputes have no clear legal basis. So that the role of Notaries also does not have the legality to decide on mediation of failed construction disputes, or the results of Notary mediation in cases of fraud committed by housing developers in housing sale and purchase agreements through KPR credit.*

**Keyword:** *Developer; Housing; Misbruik Van Omstandigheden.*

## **1. Introduction**

One of the most fundamental housing problems is the house sale and purchase agreement made in the form of a standard contract or also known as a standard contract. It is said to be standard because this agreement is made unilaterally, namely by the business actor and contains provisions that apply generally (mass), so that the other party (consumer) only has two choices: to agree or reject it. This contract often contains an exoneration clause whose contents are the transfer of responsibility of the business actor so that it is detrimental to the consumer. The standard agreement is used in the housing credit agreement above where the real estate business actor has prepared the clauses in the agreement in advance and the consumer can only agree to it without having the opportunity to negotiate changing the clauses that have been made by the real estate business actor. The agreement occurs based on the principle of freedom of contract between parties who have an equal position, this principle can be concluded from Article 1338 of the Civil Code which states that "all agreements made legally, apply as a law for those who make them", while in a standard agreement, the freedom of contract is questionable because it can be said that in a standard agreement there is no equal position between the parties who make the agreement.

Article 15 (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states: Notaries are authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law. In addition to the authority as referred to in paragraph (1), the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Notaries are authorized to provide legal counseling in connection with the making of deeds. Even though the position of a notary is very important in a housing sale and purchase agreement, especially for the protection of the rights of the parties, the role of a notary is still relatively minimal.

Standard agreements in the housing sale and purchase habits between developers and consumers without the involvement of a Notary will be very likely to be at risk of legal defects or unlawful acts and defaults committed by one of the parties. Including the issue of third party lawsuits, in this case the financier or often carried out by creditors or banks. This can be seen in the case of housing in the Cabawan, Margadana, Tegal area. It has been 3 years after 3 since the down payment was submitted to the developer, the house sale and purchase agreement has not been seen and processed, as a result of this, the homeowners are often visited by the Bank stating that they will seize the houses they own due

to the absence of a clear credit agreement. The Bank's action is clearly inappropriate considering that in the property sale and purchase credit agreement, the buyer only makes a standard agreement with the developer who is currently not responsible. It was later discovered that the land certificate that was collateralized at the bank, while the down payment that had been submitted was unknown. This becomes even more of a dilemma because the Bank will sue the homeowners on the grounds that there is no clarity of the agreement and the debtor's obligations carried out by the housing owner.<sup>1</sup>In this case, the Bank was sued by parties who felt they had been harmed, then the parties agreed to take a peaceful route through TEGAL District Court Decision Number 42/Pdt.GS/2023/PNAugust 31, 2023. In the decision, the judge ruled that:<sup>2</sup>

1. Punish both parties, namely PT. Bank Rakyat Indonesia Persero Tbk BRI Tegal Branch Office, Krandon Unit, domiciled at Jalan Dr. Cipto Mangunkusumo no 264, Cabawan Village, Margadana District, Tegal City, in this case granting power of attorney to Syali Satun Nisa as Micro Business Manager of PT. Bank Rakyat Indonesia (Persero) Tbk BRI Tegal Branch Office, Nirmala Yogha as Head of Unit of PT. Bank Rakyat Indonesia (Persero) Tbk BRI Tegal Branch Office, Krandon Unit, Widodo Saputra as Mantri of PT. Bank Rakyat Indonesia (Persero) Tbk BRI Tegal Branch Office, Krandon Unit, Imam Febriyanto as PIC of Simple Lawsuit of PT. Bank Rakyat Indonesia (Persero) Tbk BRI Tegal Branch Office as Plaintiff and Tirnojo, Place and Date of Birth: Tegal, December 24, 1974, Gender: male, Address: Jl. Dr. Cipto Mangunkusumo RT 001/001 Cabawan Village, Margadana District, Tegal City as Defendant I and Siti Ropiah Place and Date of Birth: Tegal, June 2, 1975, Gender: Female, Address: Jl. Dr. Cipto Mangunkusumo RT 001/001 Cabawan Village, Margadana District, Tegal City as Defendant II to comply with the contents of the agreement that has been agreed upon.
2. Ordering the Plaintiff to pay court costs of Rp. 154,000 (one hundred and fifty four thousand rupiah).

## 2. Research Methods

The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in the interactions between them. That the real reality of life does not exist in the empirical world which is also the world of observation, does not appear in the form of objectively patterned and structured behavior (let alone normative) and therefore can be measured to produce quantitative data. The reality of life actually only exists in the realm of meaning which

---

<sup>1</sup>Interview with Bayu Sugiono, a resident of the problematic housing complex, the interview was conducted on September 12, 2023.

<sup>2</sup> TEGAL District Court Decision Number 42/Pdt.GS/2023/PN, accessed via <https://bangunan3.mahkamahagung.go.id/direktori/bangunan/zaee47e04a4b92428d95313632353133.html>, on December 12, 2023.

appears in the form of symbols that can only be understood after being interpreted. Such realities cannot be easily "captured" through external observation and measurement. These realities can only be "captured" through experience and internal experiences that produce a complete picture of understanding.<sup>3</sup>

### 3. Results and Discussion

#### 3.1. Home Purchase Credit Agreement Through Developer

In line with the country's economic conditions, housing development companies will grow. The housing business will flourish if the rate of economic growth is good so that people's purchasing power increases. This is very rational considering that housing in Indonesia is purchased with a Housing Credit mechanism distributed by Government Banks and Private Banks. So that the condition of national banking will be very correlated with the housing business. When the country was hit by a storm of crisis a decade ago, the housing business seemed to be in a coma, today along with the revival of the national economy, the housing business is growing to the regions, including the city of Tegal. Home Ownership Credit (KPR) facilities are one way for people to own a home, especially if there are economic limitations to buy a house in cash. In practice, Home Ownership Credit (KPR) facilities are distributed by various commercial banks which are directly aimed at consumers consisting of various strata in society. Because it is directly aimed at consumers, this type of credit is called consumer or consumptive credit (hereinafter referred to as "consumptive credit").

This type of credit is categorized as a credit facility that is for consumption. Consumptive is credit given by banks to third parties or individuals for consumer needs in the form of goods and/or services by purchasing, renting or otherwise. With the existence of this Home Ownership Credit (KPR), the community can enjoy housing needs for people who need a house. According to the provisions of Article 1 number 11 of Law Number 10 of 1998 concerning Banking, it states:

Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest.

Sentosa Sembiring further stated that the credit was:<sup>4</sup>

The provision of money or bills that can be equated with it based on a loan agreement between a bank and another party in which the borrower is obliged to pay off his debt after a certain period of time with a predetermined amount.

---

<sup>3</sup>Soetandyo Wignjosoebroto, Law, Paradigm, Method, and the Dynamics of the Problem, HUMA, Jakarta, 2002, p.198.

<sup>4</sup>Sentosa Sembiring, 2000, Banking Law, CV. Mandar Maju, Bandung, p. 51.

Simply put, it can also be stated that credit is trust or mutual trust between creditors and debtors. So what has been agreed must be obeyed. From the formulation above, it appears that the relationship between the creditor in this case the Bank (creditor) and the credit recipient in this case the customer (debtor), is based on an agreement which in banking practice is known as a bank credit agreement.

The definition of credit was then expanded with the term credit, which according to Munir Fuady is:<sup>5</sup>

A provision of money or something similar, based on a loan agreement between the creditor (bank, company or individual) and the debtor (borrower), which requires the debtor to pay off his debt within a certain period of time, where as a reward for his services, the creditor (lender) is given the right to receive interest, compensation or a share of the calculated results during the credit period.

Banking practices have shown that for the provision of Home Ownership Credit (KPR), banks often cooperate with various developers. In this cooperation agreement, the bank and developer will market each other's products through their marketing fields. On the developer side, they will offer their consumers various conveniences from the bank they are working with, if the consumer needs a consumer credit facility. Likewise on the bank side, the bank will refer and refer to the developers they are working with to buy a house.

### **3.2. The Role of Notaries in Preventing and Overcoming *Misunderstanding of the Standing Orders* What the Housing Developer Does in the Agreement Home Purchase Credit Through Developers**

It is known together that one of the authorities of a Notary is to provide legal counseling related to the deeds that will be made, including deeds related to cooperation in the construction of a building in the community, this can be clearly found in the provisions of Article 15 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Legal counseling carried out by notaries is part of the development of national law through the socialization of certain laws and regulations to increase public legal awareness in obtaining justice to exercise their rights and obligations in making authentic deeds. Notaries only provide counseling to clients who will make deeds to them. Notary legal counseling can be done by providing a correct understanding of the laws and regulations related to the deeds desired by the parties (appearers). Notaries must explain the contents of the deed that has been made, because not everyone who makes a deed can understand the contents of the deed well. Notaries do not receive an honorarium for providing legal counseling to clients. The main basis for legal counseling is the 1945 Constitution of the Republic of Indonesia, which states that the Indonesian state is based on law and not on power. One of the most

---

<sup>5</sup>Salim HS, 2006, Contract Law: Theory & Contract Drafting Techniques, Sinar Grafika, Jakarta, p. 113.

important provisions related to legal counseling is Article 27 Paragraph (1) which states that "all citizens have the same status before the law and the government is obliged to uphold the law without exception."<sup>6</sup>

Notaries also in its development often become mediators in disputes related to notarial disputes including issues of agreements on the use of building construction services, this is a development of the Notary's authority as a Notary legal advisor. In its development, this does not yet have legal certainty considering that the UUJN does not explicitly state that mediators are one of the Notary's authorities, however, the UUJN also does not contain a prohibition on Notaries becoming mediators, and it is known together that mediators are also not positions included in the State Civil Apparatus. The absence of clear regulations related to the position of Notaries as mediators, makes the position of Notaries as mediators in notarial disputes have no clear legal basis. So that the role of Notaries also does not have the legality to decide on mediation of failed construction disputes, or the results of Notary mediation in cases of fraud committed by housing developers in housing sale and purchase agreements through KPR credit.<sup>7</sup>

### **3.3. Constraint Regarding Problems in the Implementation of the Role of Notaries in Protection Law For Property Buyers on Credit When a Lawsuit Occurs by a Third Party in Tegal Currently**

#### **a. Legal weaknesses (weaknesses in making agreements)**

The initial obstacle is the buyer's lack of understanding regarding the legal rules of the home credit agreement and the buyer's lack of understanding regarding their rights as buyers in the contents of the home purchase agreement via KPR through the developer or housing developer. This makes the developer freely act fraudulently to seek unilateral profit, moreover the Notary as the party making the KPR housing purchase agreement does not explain the contents of the agreement that has been made as a law for the parties who made it as based on the principle of *pacta sunt servanda*.

#### **b. Weaknesses in implementing the agreement**

The second weakness is the weakness in the form of technical implementation of the agreement which is often cheated by the developer. As is known, although the home ownership credit agreement held between PT Waisman Property Sejahtera and the housing consumer ends after the consumer agreement is transferred to the bank with a housing credit agreement, the remaining housing credit agreement with PT Waisman Property Sejahtera is not canceled before the terms of the agreement held with the consumer are fulfilled, such as the unfinished payment of the house location determination money or the unfinished physical building 100%. In the implementation of the home ownership

---

<sup>6</sup>Personal interview with Adi Akbar as Notary/PPAT in Tegal City on May 11, 2023.

<sup>7</sup>Adi Akbar, loc., cit.

credit agreement between PT Waisman Property Sejahtera and the consumer after the home ownership agreement on credit to the bank, it turns out that there are obstacles, especially faced by the consumer. The obstacles faced in the implementation of the home ownership credit agreement between PT Waisman Property Sejahtera and the consumer are in the form of:<sup>8</sup>

- a. PT Waisman Property Sejahtera Does Not Continue Physical Preparation of Building in the Form of Painting Not always in the housing credit agreement made between the consumer and the bank, the physical building is 100% ready but because PT Waisman Property Sejahtera promised to prepare it in the near future, a credit agreement was made, but after the credit agreement between the consumer and the bank and PT Waisman Property Sejahtera had received its rights from the sale of its house, PT Waisman Property Sejahtera did not prepare the physical deficiencies of the building, which ultimately harmed the consumer because they prepared the physical deficiencies of their own building, such as painting the building, preparing bathrooms and toilets, so that consumers were harmed by the preparation.
- b. PT Waisman Property Sejahtera Does Not Submit Funds for Physical Preparation of Building Because PT Waisman Property Sejahtera did not prepare the physical deficiencies of the building until the consumer prepared it themselves, but PT Waisman Property Sejahtera did not replace the funds for the physical preparation of the building by the consumer, even though the funds for that had been agreed upon by both parties, so that the consumer was increasingly disadvantaged.
- c. Weaknesses in the role of Notaries which are not yet optimal It has been explained that Legal counseling carried out by notaries is part of the development of national law through the socialization of certain laws and regulations to increase public legal awareness in obtaining justice to exercise their rights and obligations in making authentic deeds. Notaries only provide counseling to clients who will make deeds to them. Notary legal counseling can be done by providing a correct understanding of the laws and regulations related to the deeds desired by the parties (applicants). Notaries must explain the contents of the deeds that have been made, because not everyone who makes deeds can understand the contents of the deed well. Notaries do not receive an honorarium for providing legal counseling to clients. The main basis for legal counseling is the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is based on law and not based on power. One of the most important provisions related to legal counseling is Article 27 Paragraph (1) which states that "all citizens have the same position before the law and the government is obliged to uphold the law without exception." Notaries also in its development often become mediators in disputes related to notarial disputes including issues of agreements on the use of building construction services, this is a development of the Notary's authority as a Notary legal advisor. In its

---

<sup>8</sup>Personal interview with Budi Susiolo as the buyer of the Griya Indah Bogares house on June 12, 2023.

development, this does not yet have legal certainty considering that the UUJN does not explicitly state that mediators are one of the Notary's authorities, however, the UUJN also does not contain a prohibition on Notaries becoming mediators, and it is known together that mediators are also not positions included in the State Civil Apparatus. The absence of clear regulations related to the position of Notaries as mediators, makes the position of Notaries as mediators in notarial disputes have no clear legal basis. So that the role of Notaries also does not have the legality to decide on mediation of failed construction disputes, or the results of Notary mediation in cases of fraud committed by housing developers in housing sale and purchase agreements through KPR credit.<sup>9</sup>

#### **4. Conclusion**

The regulation of the role of Notaries in legal protection for property buyers on credit when a lawsuit is filed by a third party in Tegal is currently unable to realize legal certainty, this is because Notaries only provide counseling to clients who will make deeds to them. Notary legal counseling can be done by providing a correct understanding of the laws and regulations related to the deeds desired by the parties (applicants). Notaries must explain the contents of the deeds that have been made, because not everyone who makes deeds can understand the contents of the deed well. Notaries do not receive an honorarium for providing legal counseling to clients. The main basis for legal counseling is the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is based on law and not based on power. One of the most important provisions related to legal counseling is Article 27 Paragraph (1) which reads, that "all citizens have the same position before the law and the government is obliged to uphold the law without exception."

#### **5. References**

##### **Book**

HS, Salim, 2006, *Contract Law: Theory & Contract Drafting Techniques*, Sinar Grafika, Jakarta

Sembiring, Sentosa, 2000, *Banking Law*, CV. Mandar Maju, Bandung

Wignjosoebroto, Soetandyo, 2002, *Law, Paradigm, Method, and Problem Dynamics*, HUMA, Jakarta

##### **Decision**

TEGAL District Court Decision Number 42/Pdt.GS/2023/PN, accessed via <https://bangunan3.mahkamahagung.go.id/direktori/angkatan/zaee47e04a4b92428d95313632353133.html>, on 12 December 2023

---

<sup>9</sup>Personal interview with Adi Akbar as Notary/PPAT in Tegal City on May 11, 2023.



### **Interview**

Personal interview with Adi Akbar as Notary/PPAT in Tegal City on May 11 2023

Personal interview with Budi Susiolo as buyer of the Griya Indah Bogares house on June 12 2023

Interview with Bayu Sugiono, who is a resident of the problematic housing complex, the interview was conducted on September 12 2023